IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO.1906 OF 2006

M/s.Jneel Textile Processors .. Petitioner
v/s.
Customs, Excise & Service
Appellate Tribunal. .. .. Respondent

Mr.Sudhir Sakhardande with Mr.H.G. Dharmadhikari for petitioner.

Mr.A.S.Rao for respondent.

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**CORAM : H.L. GOKHALE &**
**V.R. KINGAONKAR, JJ.**

**DATED : 2nd August 2006**

**P.C. :**

1. Rule. Heard the learned Counsel for the parties.

2. The grievance of the petitioner is with respect to the order dated 10th May 2006, whereby the petitioner's application for restoration of the Excise Appeal has come to be rejected by the impugned order dated 16th December 2005. We quite see the agony expressed by the Tribunal in its order that nobody was present on behalf of the petitioner on two occasions and, therefore, ultimately it felt that the application did not deserve to be granted. Even so, with a view not to cause any prejudice to the case of the petitioner, which Mr.Sakhardande says is very

strong on merits, we allow the Petition and set aside the impugned order and restore the Appeal and the Application for stay for consideration by the Customs Excise and Service Tax Appellate Tribunal.

3. On our query, Mr.Sakhardande for the petitioner states that the petitioner will deposit an amount of Rs.Two Lakhs with the concerned Department within four weeks. In view of this statement of Mr.Sakhardande, the Appeal will be taken up for consideration of the Stay Application after four weeks. In the event the amount is not so deposited, the Appeal will stand dismissed automatically. On the amount of Rs.Two Lakhs being deposited, it will be open to the petitioner to canvass before the Appellate Tribunal that there should be no pre-deposit and it will also be open to the Department to canvass that the entire amount should be deposited. It will be for the Tribunal to consider and decide the Stay Application thereafter.

4. Needless to state that the respondents will not proceed with the steps for recovery within these four weeks.

5. Rule is made absolute as above. No order as to costs.

**(H.L. GOKHALE, J.)**

**(V.R. KINGAONKAR, J.)**